

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0099P
Gross Income Tax-Penalty
For the Years 2000-2002

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ISSUE

I. Tax Administration—Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a corporation engaged in the securities brokerage business. During the years in question, Taxpayer had commissions, principal transactions, and margin interest income. The Department and Taxpayer had concluded several years earlier that 60 percent of the amounts attributable to Indiana customers from these sources was subject to Indiana gross income tax. For the years in question, Taxpayer made a computational error that resulted in 60 percent of the 60 percent (i.e., 36 percent) of the amounts being subject to gross income tax.

Before November 15, 2005, during Indiana Tax Amnesty, Taxpayer recomputed its gross income tax liability for the periods at issue. Taxpayer properly included 60 percent of its commissions as being subject to gross income tax; however, Taxpayer only reported 50 percent of its income from principal transactions and margin interest as subject to gross income tax. On December 8, 2005, the Department completed an audit including 60 percent of its income from principal transactions and margin interest as subject to gross income tax. Taxpayer was assessed additional tax, along with interest and penalties on the additional amount of the assessment. Taxpayer only protests the imposition of penalties. Additional facts will be supplied as necessary.

I. Tax Administration—Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty for the taxes that the Department has imposed.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

Taxpayer argues that, had it known about the issues at hand prior to November 15, it would have paid the full amount of the liability, and would not have been subject to penalty. In review, Taxpayer's return for the years at issue included the incorrect amount of income based on a computational error. Then, Taxpayer sought to correct the error just prior to end of Indiana Tax Amnesty, and made yet another error. By virtue of its initial computational error, Taxpayer was negligent within the meaning of the statute and regulations concerning penalties, notwithstanding Taxpayer's effort to correct this problem prior to November 15, 2005.

FINDING

Taxpayer's protest is denied.

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